

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CASE NO.:

MORGAN HOWARTH,

Plaintiff,

v.

HERO BUILD SOLUTIONS LLC,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff MORGAN HOWARTH by and through his undersigned counsel, brings this Complaint against Defendant HERO BUILD SOLUTIONS LLC for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff MORGAN HOWARTH (“Howarth”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Howarth's original copyrighted Works of authorship in his Works.

2. Based in the Washington D.C. area, Howarth has been a photographer for over 25 years and focuses on interior and architecture work. His rich and illustrative style brings architecture to life by combining a multitude of separately

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lit images into one perfect shot. Howarth has worked as a photographer for a multitude of national clients including Timex, Sears Catalog, The Lenox Hotel, Cole Haan Shoes, GH Bass Shoes, Timberland Shoe, CBS, and Home & Design Magazine, and has been exposed to many beautiful people and places throughout his career. However, he still considers the best part of any assignment to be the client's final "Wow!"

3. Howarth uses a combination of tungsten, daylight, and strobe light to create the best possible natural looking light to suit the needs of each room or scene. This process takes several different exposures and lighting set-ups per image which are then combined into one Hi-Res image.

4. Defendant HERO BUILD SOLUTIONS LLC ("HBS") is a construction services company that offers architectural design, interior design, planning and furnishing, landscaping design, new construction build, addition builds, pool build, outdoor entertainment builds, flip and rehab, basement finishing, remodeling, improvement, and other services. At all times relevant herein, HBS owned and operated the internet website located at the URL www.herobuildsolutions.com. (the "Website").

5. Howarth alleges that HBS copied Howarth's copyrighted Works from the internet in order to advertise, market and promote its business activities. HBS committed the violations alleged in connection with HBS' business for purposes of

advertising and promoting sales to the public in the course and scope of the HBS' business.

JURISDICTION AND VENUE

6. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

8. Defendant is subject to personal jurisdiction in Georgia.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

10. Hero Build Solutions LLC is a Georgia limited liability company with its principal place of business at 3225 Shallowford Road, Building 1000, Marietta, Georgia, 30062, and can be served by serving its Registered Agent, Mr. Saeid Beyrami, at the same address.

THE COPYRIGHTED WORKS AT ISSUE

11. In 1997, Howarth created the photographs in the 5519 Center Master Bath Series, entitled 5519_Center_Mast_Bath Series, 1_F, 3_F, and 4_Windows_F, and in 2015 created the 8608 Stirrup Kitchen Series, entitled 8608_Stirrup_Kitchen Series, 1_F, 2_F, and 3_F. The six photos at issue in this

matter are attached hereto as Exhibit 1 (one of which is shown below), and referred to herein as the “Works”



12. Howarth registered the Works with the Register of Copyrights on August 29, 2014 and January 26, 2016, and was assigned registration numbers VA 1-958-957 and VA 2-013-533. The Certificates of Registration are attached hereto as Exhibit 2.

13. Howarth's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

14. At all relevant times Howarth was the owner of the copyrighted Works at issue in this case.

INFRINGEMENT BY DEFENDANT

15. HBS has never been licensed to use the Works at issue in this action for any purpose.

16. On a date after the Works at issue in this action were created, but prior to the filing of this action, HBS copied the Works.

17. On or about March 17, 2020, Howarth discovered the unauthorized use of his Works on the Website depicting work performed by HBS in Atlanta and Alpharetta. Attached hereto as Exhibit 2 are copies of HBS' infringement of the Works.

18. HBS copied Howarth's copyrighted Works without Howarth's permission.

19. After HBS copied the Works, it made further copies and distributed the Works on the internet to promote the sale of goods and services as part of its construction services business.

20. HBS copied and distributed Howarth's copyrighted Works in connection with HBS' business for purposes of advertising and promoting HBS' business, and in the course and scope of advertising and selling products and services.

21. Howarth's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

22. HBS committed copyright infringement of the Works as evidenced by the documents attached hereto as Exhibit 2.

23. Howarth never gave HBS permission or authority to copy, distribute or display the Works at issue in this case.

24. Howarth notified HBS of the allegations set forth herein on June 11, 2020. To date, the parties have failed to resolve this matter. A copy of the Notice to HBS is attached hereto as Exhibit 3.

COUNT I
COPYRIGHT INFRINGEMENT

25. Plaintiff incorporates the allegations of paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. Howarth owns valid copyrights in the Works at issue in this case.

27. Howarth registered the Works at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

28. HBS copied, displayed, and distributed the Works at issue in this case and made derivatives of the Works without Howarth's authorization in violation of 17 U.S.C. § 501.

29. HBS performed the acts alleged in the course and scope of its business activities.

30. HBS's acts were willful.

31. Howarth has been damaged.

32. The harm caused to Howarth has been irreparable.

WHEREFORE, the Plaintiff prays for judgment against the Defendant Hero Build Solutions LLC that:

- a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;
- b. Defendant be required to pay Plaintiff his actual damages and HBS's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;
- c. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;
- d. Plaintiff be awarded pre and post-judgment interest; and
- e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: December 2, 2020

Respectfully submitted,

/s/ Joel B. Rothman

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